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SERVICE DATE - FEBRUARY 26, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 397X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY-ABANDONMENT EXEMPTION-IN PIERCE COUNTY, WA

Decided: February 25, 2003

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 0.24-mile line of railroad between milepost 28.10 and milepost 28.34 near McMillan, in Pierce County, WA. Notice of the exemption was served and published in the Federal Register on January 28, 2003 (68 FR 4271-72) (January 28 Notice). The exemption is scheduled to become effective on February 27, 2003.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on January 31, 2003. In the EA, SEA stated that the Washington State Office of Archaeology and Historic Preservation (OAHP) advised that the S.R. 162 McMillan Bridge over the Puyallup River has been inventoried and archaeological site 45 PI 456 has been identified and located about 100 meters west of the tracks. In view of the presence of this site, OAHP recommended that a survey for other cultural resources be undertaken in the project vicinity by qualified cultural resource professionals. OAHP stated that the results of this survey should be provided to it for review and evaluation. OAHP also recommended that interested tribal representatives be notified and consulted about this proposal. In light of this request, SEA recommended that BNSF retain its interest in the line in unaltered condition until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. Comments to the EA were due by February 15, 2003. No comments were received. Accordingly, the condition recommended by SEA will be imposed.

As noted in the January 28 Notice, on December 16, 2002, the Pierce County Parks and Recreation Department (Pierce County) filed a request for issuance of a notice of interim trail use (NITU) for the entire line under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate with BNSF for acquisition of the right-of-way for use as a trail. Pierce County submitted a statement indicating its willingness to assume full financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and

reactivation for rail service. By facsimile filed on February 10, 2003, BNSF indicated its willingness to negotiate with Pierce County.

Because Pierce County's request complies with the requirements of 49 CFR 1152.29 and BNSF is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the line, provided the condition imposed in this proceeding is met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on January 28, 2003, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice, and is subject to the condition that BNSF retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice (by August 25, 2003), interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided the condition imposed in this proceeding is met.

7. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary